

Telmex USA, L.L.C. – Application for Authority Pursuant to Section 214 of the Communications Act of 1934, as Amended, to Offer Global Facilities-Based International Switched and Private Line Services and Resold Non-Interconnected Private Line Services Between the U.S. and Foreign Points

Filed March 12, 2003

ATTACHMENT 1 TO APPLICATION

Question 9: Does the applicant request streamlined processing pursuant to 47 C.F.R. Section 63.12? If yes, include in Attachment 1 a statement of how the application qualifies for streamlined processing.

Telmex requests streamlined processing of this Application pursuant to Sections 63.12(c)(1)(ii), 63.12(c)(1)(iii), 63.12(c)(1)(iv), and 63.12(c)(1)(v) of the Commission's rules.¹ As indicated in its response to Question 11 below, Telmex USA is affiliated under the Commission's rules with foreign carriers operating in Mexico, Guatemala, Argentina, Brazil, Colombia, Ecuador, Nicaragua, Uruguay and Venezuela, all of which are WTO Member countries. *See* Response to Question 11, Part (m), below, for further details of these affiliate relationships. In every destination market, Telmex USA either (1) is not affiliated with a foreign carrier; (2) is affiliated with a foreign carrier that qualifies for a presumption of non-dominance under Section 63.10(a)(3) of the Commission's rules, 47 C.F.R. § 63.10(a)(3) (Argentina, Brazil, Colombia, Ecuador, Nicaragua, Uruguay and Venezuela); (3) is affiliated with a foreign carrier in a WTO Member country (Mexico and Guatemala) and Telmex USA agrees to be classified as a dominant carrier on the route, pursuant to Section 63.10(a)(2) of the Commission's rules, 47 C.F.R. § 63.10(a)(2), without prejudice to its right to petition for reclassification at a later date, and without prejudice to Telmex's position that it is not properly considered dominant in Mexico

¹ 47 C.F.R. § 63.12(c)(1)(ii), (iii), (iv), (v); *see also* 1998 Biennial Regulatory Review – Review of International Common Carrier Regulations, Report and Order, 14 FCC Rcd 4909, ¶ 22 (1999).

under Mexican law; or (4) is affiliated with a foreign carrier that owns only mobile wireless facilities (Brazil, Colombia, Ecuador, and Nicaragua).

Question 10: If applying for authority to provide switched services over private lines pursuant to Section 63.16, provide the required showing in Attachment 1.

No response required. Telmex USA is not seeking authority to provide switched services over private lines to any destination, including Mexico, where the Commission has not already authorized the provision of such services.

Question 11: If the applicant is a foreign carrier, or is affiliated (as defined in 47 C.F.R. Section 63.09(e)) with a foreign carrier, provide in Attachment 1 the information and certifications required by Section 63.18(i) through (m).

(i) Telmex USA certifies that it is not a telecommunications carrier in any foreign country. Telmex USA is affiliated with Telmex, a telecommunications carrier that provides domestic telecommunications services in Mexico and international telecommunications services originating in Mexico on the U.S.-Mexico route. Under the Commission's rules, Telmex USA is also affiliated with foreign carriers operating elsewhere in Latin America. Specifically, América Telecom, S.A. de C.V., a Mexican holding company under common control with Carso Global Telecom, S.A. de C.V., Telmex's controlling shareholder, controls América Móvil, S.A. de C.V. ("América Móvil"), a Mexican telecommunications company that in turn controls Telecomunicaciones de Guatemala ("Telgua"), a Guatemalan telecommunications company. América Móvil also controls Techtel LMDS Comunicaciones Interactivas, S.A. ("Techtel"), a new Argentine local and long distance competitor. América Móvil is also affiliated with the following wireless providers: ATL-Algar Telecom Leste S.A., Tess S.A., Americel S.A. and Telet S.A. (Brazil); Comunicación Celular S.A., Occidente y Caribe Celular S.A., and Celcaribe S.A. (Colombia); Consorcio Ecuatoriano de Telecomunicaciones, S.A. (Ecuador); Servicios de Comunicaciones de Nicaragua, S.A. (Nicaragua); Servicios de Comunicaciones Personales

Inalámbricas, S.A. (Guatemala); and Radiomóvil Dipsa, S.A. de C.V. (Mexico). In addition, América Móvil recently announced that one of its subsidiaries has entered into an agreement with BellSouth Corporation and Verbier, a Brazilian holding company, such that América Móvil will acquire approximately a 95% interest in BSE, S.A., a Brazilian wireless company. Finally, América Móvil is affiliated with Telstar, S.A. and Genesis Telecom, C.A., new broadband wireless operators in Uruguay and Venezuela, respectively.

(j)(3) Telmex USA seeks authority to provide international telecommunications services to all global points. By its signature on this Application, Telmex USA certifies that it seeks to provide international telecommunications services to the destination countries identified in response to part (i) above, in which it is under common control with a foreign carrier under the Commission's rules.

(k)(1) All of the named foreign countries are members of the WTO.

(l) Not applicable. Telmex USA already holds authority to resell the international switched services of an unaffiliated U.S. carrier for the purpose of providing international telecommunications services to all global points.

(m) As discussed in the response to part (i), above, Telmex USA is affiliated with foreign carriers in various countries throughout Latin America. Telmex USA notes that Telmex and Telgua appear on the Commission's list of carriers that are not entitled to the presumption of non-dominance established in Section 63.10(a)(3) of the Commission's rules, and therefore are presumed under those rules to possess market power on the foreign end of the route.² Telmex USA observes, however, that Telmex today is not properly considered dominant in Mexico

² See Public Notice, *The International Bureau Revises and Reissues the Commission's List of Foreign Telecommunications Carriers That Are Presumed to Possess Market Power in Foreign Telecommunications Markets*, DA 03-456 (rel. Feb. 19, 2003).

under Mexican law, which differs from U.S. law and the Commission's rules. Whether Telmex possesses market power in relevant Mexican telecommunications markets is a question that currently is being litigated before the Mexican Federal Competition Commission and in the Mexican courts. With respect to the U.S.-Mexico and U.S.-Guatemala routes, however, Telmex USA will comply with the Commission's rules applicable to carriers affiliated with foreign carriers that the Commission considers dominant under its rules, without prejudice to Telmex USA's right to seek reclassification of Telmex and Telgua in the future, and without prejudice to Telmex's position that it is not properly considered dominant in Mexico under Mexican law.

With respect to Argentina, the Commission's rules presumptively classify Telmex USA as non-dominant because its affiliate, Techtel, is a new local and long distance competitor that has substantially less than 50 percent market share in the Argentine international transport and local access markets.³ As a result, the Commission has already declined to impose dominant carrier treatment on Telmex USA on the U.S.-Argentina route.⁴ For the same reason, the Commission should classify Telmex USA as non-dominant on the U.S.-Argentina route with respect to the services Telmex USA seeks authority to provide in this Application.

With respect to the remaining countries in which Telmex USA would be deemed affiliated with a foreign carrier under the Commission's rules, Telmex USA qualifies for a presumption of non-dominance because those carriers have significantly less than 50 percent market share in the international transport and local access markets on the foreign end of the route. Specifically, in Brazil, Colombia, Ecuador and Nicaragua, the affiliated carriers are

³ See 47 C.F.R. § 63.10(a)(3).

⁴ See File No. FCN-NEW-20000908-00051; *see also XO Communications, Inc.*, Memorandum Opinion and Order and Authorization, 17 FCC Rcd 19212, ¶ 32 (Int. Bur. 2002) (declining to impose dominant carrier safeguards on XO as a result of its affiliation with Techtel resulting from Telmex's proposed 40 percent indirect investment in XO).

wireless service providers. The Commission has determined that mobile wireless service providers lack sufficient market power to affect competition adversely in the U.S. market.⁵ In Uruguay and Venezuela, the affiliated carriers are new entrants providing broadband wireless services, and thus similarly lack sufficient market power to affect competition adversely in the U.S. market.

Question 12: Does the applicant seek authority to provide service to any destination described in paragraphs (1) through (4) of Section 63.18(j)? If yes, list those destinations in Attachment 1 as a response to question 12.

By its signature on this Application, Telmex USA certifies that it seeks to provide international telecommunications services to destination countries, specifically Mexico, Guatemala, Argentina, Colombia, Ecuador, Nicaragua, Uruguay and Venezuela, in which it is under common control, within the meaning of Section 63.18(j)(3) of the Commission's rules, with a foreign carrier. Pursuant to Brazilian government regulations, América Móvil does not control its Brazilian affiliates.

Question 15: In Attachment 1, respond to paragraphs (d), (e)(3) and (g) of Section 63.18.

(d) Telmex USA holds authorization to provide international switched resale services from the United States to all international points.⁶

⁵ *In re 1998 Biennial Regulatory Review – Review of International Common Carrier Regulations*, Report and Order, 14 FCC Rcd 4909 (1999), at ¶ 29.

⁶ *Telmex/Sprint Communications, L.L.C. Application for Authority Under Section 214 of the Communications Act for Global Authority to Operate as an International Switched Resale Carrier Between the United States and International Points, Including Mexico*, Order, Authorization and Certificate, 12 FCC Rcd 17551 (1997). On June 30, 1999, the Commission granted consent to the transfer of control of Telmex/Sprint Communications, L.L.C. to Telmex International Ventures USA, Inc. ("Telmex International Ventures"). See *International Authorizations Granted*, 14 FCC Rcd 13107 (1999). By letter filed December 10, 1999, Telmex International Ventures advised the Commission that, pursuant to Section 63.24 of the Commission's rules, it had assigned the Section 214 authorization to its parent, Telmex International, Inc. ("Telmex International"), and that pursuant to Section 63.21(i), Telmex USA, a wholly-owned subsidiary of Telmex International, would use the authorization.

(e)(3) By this Application, Telmex USA requests authority to provide global facilities-based international switched services to all international points, including countries in which its affiliates provide services, namely Mexico, Guatemala, Argentina, Brazil, Colombia, Ecuador, Nicaragua, Uruguay and Venezuela. Further, Telmex USA requests authority to provide resold non-interconnected private line services to all international points. Finally, Telmex USA requests authority to provide interconnected private line service on routes where the Commission has already authorized the provision of such service. In this Application, Telmex USA does not seek authority to provide international simple resale services on the U.S.-Mexico route prior to the time the Commission grants authority to provide such services on that route.

By its signature on this Application, Telmex USA certifies that it will comply with the requirements of sections 63.21, 63.22, and 63.23 of the Commission's rules, 47 C.F.R. § 63.21, 63.22, and 63.23, with respect to the provision of all services authorized by the grant of this Application.

(g) Authorization of the facilities contemplated in the section 63.18(e)(3) request for authority described above is categorically excluded from environmental processing under section 1.1306 of the Commission's rules, 47 C.F.R. § 1.1306, because the proposed facilities do not fall within any of the types specified in section 1.1307(a-b) of the Commission's rules, 47 C.F.R. § 1.1307(a-b).

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